

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.76 of 2017

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1. Smt. Suman Agrawal, Wife of Ranbir Prasad Agrawal, Resident of Mohalla- Bela Garden, P.O.-Lalbagh, P.S.-LNMU Campus, District-Darbhanga, presently residing at Flat No.45, Pankaj Apartment, 86, Baliganj Place, Kolkata (West Bengal).
 2. Smt. Ranjana Agrawal, Wife of Vijay Kumar, Resident of Mohalla- Bela Garden, P.O.-Lalbagh, P.S.-LNMU Campus, District-Darbhanga, presently residing at R.R.N. Road, Narsingh Dighi, Cooch Behar, (West Bengal) through her son and power of attorney holder, Shikhar Kumar, Son of Vijay Kumar, resident of Mohalla- Bela Garden, P.O.-Lalbagh, P.S.-LNMU Campus, District-Darbhanga, presently residing at R.R.N. Road, Narsingh Dighi, Cooch Behar, (West Bengal).
- Defendants/ Petitioners

Versus

1. Ravi Kumar Agrawal @ Ravi Agrawal, Son of Late Raghubir Prasad, resident of Mohalla- Bela Garden, P.O.-Lalbagh, P.S.-LNMU Campus, District-Darbhanga. --Plaintiff/Respondent.
2. Sri Uday Shankar Yadav, Son of Shobhit Yadav, Resident of Mohalla-Panda Sarai, P.O. & P.S.-Laheriasarai, District-Darbhanga.
3. Sri Ranjit Prasad, Son of late Jagdish Prasad, Resident of Mohalla-Banglagarh, P.O.-Lalbagh, P.S.-Town, District-Darbhanga.

.... Defendants/Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-07-2017

Learned counsel for the petitioners, in view of the office report pointing out that this application is not barred by limitation, has prayed that the I.A.No.3368/2017 is not being pressed.

Accordingly, the said interlocutory application (I.A.No.3368/2017 is dismissed as not pressed.

Heard the learned counsel for the petitioners on merits.

By the impugned order, the learned court below has



turned down the prayer on behalf of the defendant nos.1 and 2 for rejection of the plaint under Order 7 Rule 11 C.P.C. The averments made in the plaint show that the suit has been filed by the plaintiff for recovery of possession alleging that the defendant nos.1 and 2 with their henchmen dispossessed the plaintiff from the suit property described in Schedule-II of the plaint. It further transpires from the averments that it is the case of the plaintiff that the property mentioned in Schedule-II of the plaint belongs to the defendant nos.1 and 2 who have given it on lease to defendant no.4 and the plaintiff has asserted to have been in possession of the said property on the authority of the defendant no.4. The plaintiff has alleged illegal dispossession at the hand of the defendant nos.1 and 2 as stated above and accordingly the suit for possession and grant of permanent injunction against the defendants has been filed.

The defendant nos.1 and 2-petitioners filed a petition under Order 7 Rule 11 C.P.C. for rejection of the plaint mainly on the ground of absence of cause of action to the plaintiff for the reliefs as prayed in the suit. The said petition has been rejected by the impugned order.

Learned counsel for the petitioners has emphatically pointed out that according to the averments made in the plaint, the plaintiff was not in possession of Schedule-II properties in his own



right and the fact has expressly been accepted that the plaintiff was in possession of the suit property under the authority of the defendant 2nd set who according to the plaintiff has taken the Schedule-II property on lease from the defendant nos.1 and 2. It has been contended, therefore, that, in this fact situation, the plaintiff cannot be accepted to be entitled to seek the relief for recovery of possession because it was the defendant 2nd set who could have been maintained the suit for recovery of possession. Elaborating the submissions, learned counsel for the petitioners has submitted that the defendant nos. 1 and 2 do not accept the lease said to have been executed by them in favour of the defendant 2nd set for the suit property. Even otherwise also, alleged lease as mentioned in the plaint being admittedly for more than one year was required to be registered and as such, the said lease has no legal sanction. Learned counsel, therefore, has submitted that the learned court below has committed error of jurisdiction and illegality in rejecting the petition of the petitioners praying for rejection of the plaint.

After considering the submissions and the perusal of the materials on record, it is absolutely limpid that the plaintiff has come out with the case of possession of the property mentioned in Schedule-II of the plaint on the authority of the defendant 2nd set with further assertion that the defendant 2nd set has taken the said property



on lease from the defendant nos. 1 and 2. According to the well settled principles the averments made in the plaint are to be taken to be true for the purpose of considering the prayer for rejection of plaint as envisaged under Order 7 Rule 11 C.P.C. In this backdrop, if the claim of the plaintiff to be in possession of the property in question before the alleged illegal dispossession by the defendant nos.1 and 2 and their henchmen is true then it cannot be said that it was for the defendant 2nd set to maintain the suit for recovery of possession when it is not the case of the plaintiff that the defendant 2nd set has been factually dispossessed. Taking even extreme view of the matter that the plaintiff was a trespasser over the suit property, still his possession would be good against the whole world except the person legally entitled to possession of the said property. The pleas as raised by the defendant-petitioners pertaining to title, denial of execution of the lease or invalidity of the lease in favour of the defendant 2nd set cannot be the ground for rejection of the plaint as envisaged under Order 7 Rule 11 C.P.C. where Clause (a) postulates non-disclosure of cause of action in the plaint as distinguished from absence of cause of action. The ambit and scope of Order 7 Rule 11 C.P.C. has been clearly elaborated by the Apex Court in a recent judgment in the case of **Kuldeep Singh Pathania Vs. Bikram Singh Jaryal, 2017(1) PLJR (SC) 484.**



In view of the dictum of the apex court and after considering the entire facts and circumstances, this Court does not find that the petitioners have made out a case for rejection of plaint under Order 7 Rule 11 C.P.C. This Court further holds that the learned court below has not committed any error of jurisdiction or illegality in passing the impugned order rejecting the prayer of the defendant-petitioners for rejection of plaint.

The revision application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2017
Transmission Date	

